



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

May 2, 1984

R-1984-2

In re the Matter of :
: Petition Under
: 37 CFR §1.341(i) -

petitions under the provisions of 37 CFR §1.181, from the final action of the Committee on Enrollment in failing to award petitioner a passing grade on the examination given October 5, 1982, for registration to practice in patent cases. The petition will be treated as though it was filed pursuant to 37 CFR §1.341(i).

The relevant facts are as follows. Petitioner took the examination given October 6, 1981, for registration to practice before the Patent and Trademark Office in patent cases. On December 15, 1981, petitioner was notified by the Chairman of the Committee, Lutrelle F. Parker, that he did not obtain a passing grade on the morning section of that examination. Petitioner thereafter applied for and took the next examination given on April 6, 1982. On June 11, 1981, petitioner was again notified by the Chairman that he had not obtained a passing grade on the morning section of the examination given April 6, 1982. Petitioner thereafter applied for and took the examination given October 5, 1982. On December 20, 1982, petitioner was notified by the next succeeding Chairman of the Committee, Donald J. Quigg, that he had not obtained a passing grade on the examination given October 5, 1982. On February 2, 1983, petitioner requested regrading of his October 5, 1982 examination papers. On February 14, 1983, petitioner was notified by Chairman Quigg that after careful review, the Committee still found that petitioner had failed to obtain a score sufficiently high to warrant a passing grade on the morning section of the examination. The finding was supported by comments of the regrader, with which the Committee concurred. On March 28, 1983, petitioner filed a further paper requesting reconsideration. Petitioner was notified on April 6, 1983 that even on reconsideration the Committee again found that petitioner failed to attain a passing grade on the morning section of the examination of October 5, 1982, and that the Committee concurred with the attached comments of the regrader. The instant petition was filed on May 11, 1983.

The established policy of the Committee is to prepare, for each examination, questions and model answers for the


questions propounded. These answers, coupled with the grader's comments with respect to answers presented by registration candidates, form the standard for evaluation of examination papers on request for regrade.

It appears that petitioner obtained copies of the regrader's comments of the answers petitioner gave to the propounded questions and the model answers.

Petitioner urges that question 11A was improvident because the correct answer involves a rule change which came into effect on October 1, 1982, four days before the examination. The rule change, 37 CFR §1.136, was part of the changes styled "Revision of Patent and Trademark Fees," Alternative B, published on July 30, 1982, at 47 F.R. 33086-33112. I am informed that candidates approved to take the October 5, 1982 examination were routinely sent on August 23, 1982, a packet of information which included notice of the approval, a reprint of the Federal Register notice which incorporated subsequently published editorial corrections, and a notice informing the candidates that they were responsible for knowing and properly applying the rule changes on the examination. Accordingly, it was reasonable to propound the question.

The Committee found on review of the questions put in issue by petitioner in his regrade, that petitioner did not pass the examination. The Committee fairly met the issues raised by petitioner and supported the finding with both law and logic. In grading and regrading petitioner's examination paper, it does not appear that the Committee has abused any discretion. Indeed, a review of petitioner's examination papers shows that there was a reasonable basis for the action of the Committee in finding that petitioner did not pass the examination on October 5, 1982.

The petition is denied.


Donald J. Quigg
Deputy Commissioner of Patents and Trademarks